

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2013-04
Issued November 14, 2013**

FACTS

The inquiring attorney is a member of the city council in a municipality. The inquiring attorney seeks an opinion about whether he/she may represent clients in Rhode Island District Court and the Rhode Island Traffic Tribunal in cases where charges are brought against individuals by the municipality. By city charter, the city council appoints a city solicitor. By practice, the city solicitor selects two deputy solicitors who are approved by the city council. One of the deputy solicitors serves as the prosecutor. The city charter prohibits council members from interfering in any way with any divisions of the administration or with any department.

An acquaintance of the inquiring attorney has asked the inquiring attorney to represent his two sons who were charged by the city with possession of marijuana, obstruction of justice, and simple assault. The inquiring attorney has explained to the individuals that he/she is a city council member, and the individuals waived any claim of conflict of interest. The deputy solicitor assigned to the case has recused himself from the matter. The city solicitor has informed the inquiring attorney that he/she appoints a “pro tempore solicitor” in matters where the solicitor and both deputies have conflicts of interest.

ISSUE PRESENTED

May the inquiring attorney who is a city council member represent clients who were charged by the city with possession of marijuana, obstruction of justice, and simple assault, in Rhode Island District Court and in Rhode Island Traffic Tribunal?

OPINION

The inquiring attorney, a city council member, may represent in Rhode Island District Court and the Rhode Island Traffic Tribunal two individuals charged by the city’s police department with possession of marijuana, obstruction of justice, and simple assault, provided he/she complies with the waiver provisions of paragraph (b) of Rule 1.7; and provided further that he/she complies with Rule 1.7 as it relates to the simultaneous representation of the two individuals.

REASONING

Rule 1.7 entitled “Conflict of interest: Current clients” is pertinent to this inquiry. It states as follows.

Rule 1.7. Conflict of interest: Current clients. (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

The municipality through its police department has charged two individuals with possession of marijuana, obstruction of justice, and simple assault. The city solicitor, or its deputies, prosecutes such cases on behalf of the city. The city council appoints the city solicitor. The inquiring attorney, a city member of the council, proposes to represent the two individuals. The Panel believes that a conflict of interest exists pursuant to Rule 1.7 (a)(2), in that there is a significant risk that the representation of the two individuals would be materially limited by the inquiring attorney's responsibilities to the city.

However, the Panel is of the opinion that the inquiring attorney may undertake the proposed representations pursuant to Rule 1.7(b). Notwithstanding his/her relationship with, and responsibilities to, the city as a city council member, the inquiring attorney may represent the individuals if the inquiring attorney reasonably believes that he/she is able to provide competent and diligent representation, the representation is not prohibited by

law, and the individuals give informed consent, confirmed in writing Rule 1.7(b).¹ The Panel believes that the city solicitor's practice of engaging outside counsel when the city solicitor or its deputies have a conflict of interest assists in the inquiring attorney's reasonable belief that he/she can provide competent and diligent representation of the individuals.

The inquiring attorney supplied no facts about the criminal charges as they relate to each of the two individuals except that they are brothers. He/she has proposed to represent both of them in the criminal matters. The Panel advises the inquiring attorney that a conflict of interest could exist in the simultaneous representation of both individuals. The Panel, therefore, further advises that in addition to complying with Rule 1.7 as it relates to the material limitations presented by his/her elected office, the inquiring attorney also must investigate whether there exists any adverse interests between the two individuals which would create a separate conflict of interest under Rule 1.7.

The Panel concludes that the inquiring attorney, a city council member, may represent in Rhode Island District Court and the Rhode Island Traffic Tribunal two individuals charged by the city's police department with possession of marijuana, obstruction of justice, and simple assault, provided he/she complies with the waiver provisions of paragraph (b) of Rule 1.7; and provided further that he/she complies with Rule 1.7 as it relates to the simultaneous representation of the two individuals in the event that the representation of one of them is directly adverse to the other.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issues raised by this inquiry.

¹ Subparagraph (3) of Rule 1.7(b) does not apply to these facts, as the inquiring attorney is a member of, and not attorney for, the city council.